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FISCAL IMPACT STATEMENT

LS 7329 | **NOTE PREPARED:** Jan 28, 2011
BILL NUMBER: HB 1483 | **BILL AMENDED:**

SUBJECT: Revenue Update Bill.

FIRST AUTHOR: Rep. Espich | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
DEDICATED
FEDERAL

Summary of Legislation: *Internal Revenue Code Reference Update:* The bill amends the definition of "Internal Revenue Code" used in Indiana statutes and regulations to refer to the Internal Revenue Code in effect on January 1, 2011.

Licensees on Tax Warrant List: The bill provides that in order to renew or obtain a license to: (1) operate certain medical facilities; (2) operate a home health agency; (3) operate a health facility; (4) work with radiation or radioactive materials; (5) operate a debt management company; (6) act as a pawnbroker; (7) engage in the business of money transmission; or (8) engage in the business of cashing checks for consideration; the licensee will be required to receive a clearance from the Department of State Revenue (DOR) if the licensee is on DOR's most recent tax warrant list. It also provides that certain licensees will be required to receive a clearance from the DOR if the licensee is on DOR's most recent tax warrant list. (Current law provides that these licensees are required to receive a clearance from the DOR if the licensee has a delinquent tax liability.)

Retail Merchant Certificate: The bill provides that the DOR may not renew a registered retail merchant certificate if the retail merchant is delinquent in remitting withholding taxes. It provides that the DOR may revoke a retail merchant certificate of a taxpayer if: (1) the fee paid by the taxpayer to renew or acquire the retail merchant certificate is not honored by a financial institution; and (2) the taxpayer does not pay the fee in guaranteed funds within five days after receiving notice from the DOR that the fee was not honored by a financial institution.

Net Operating Loss: The bill clarifies the net operating loss deduction provisions for individuals and corporations such that the loss carryback is limited to 2 years regardless of whether carryback is allowed for a period greater than 2 years but less than 6 years under the Federal income tax.

Corporation Filing Deadline: The bill provides that a corporation that merges with another corporation has the same due date for filing its final annual income tax return as the corporation with which it merged.

Earned Income Tax Credit: The bill eliminates the income tax withholding provision that allows a taxpayer to receive an advanced earned income tax credit.

Inheritance Tax: The bill establishes requirements for the appraisal of property subject to the inheritance tax.

Financial Institutions Tax: The bill makes changes to the financial institutions tax apportionment formula. It establishes a method for attributing gross income receipts that are not attributable to Indiana or any other state, for purposes of calculating the financial institutions tax.

Effective Date: November 6, 2009 (retroactive); January 1, 2011 (retroactive); July 1, 2011; January 1, 2012.

Explanation of State Expenditures: *Department of State Revenue*: The bill contains several provisions that Department of Revenue clarifications or cleanup provisions that have minimal or no impact.

Explanation of State Revenues: (Revised) *Internal Revenue Code Reference Update:* The bill updates the reference to the Internal Revenue Code (IRC) to incorporate all the federal changes made up to January 1, 2011. The current reference to the IRC pertains to all IRC provisions amended and in effect on January 1, 2010. The update would include changes as a result of the following federal acts: (1) The *Small Business Jobs Act of 2010* (P. L. 111-240), signed into law on September 27, 2010; and (2) The *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010* (P. L. 111-312), signed into law on December 17, 2010. It is estimated that the fiscal impact from the bill will begin in FY 2011. The estimated fiscal impact of the bill and the federal acts generating the fiscal impact are summarized in the table below.

Provisions (Revenue impact in millions)	**FY 2011**	**FY 2012**	**FY 2013**
Small Business Jobs Act	(1.0)	(0.4)	0.0
Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act			
(1) EITC phase-out income level for joint filers	(0.1)	(8.1)	(10.8)
(2) EITC percentage for filers with 3 or more children	0.0	(2.5)	(3.3)
(3) Employer-provided education assistance exclusion	(1.8)	(3.0)	(1.4)
(4) Student loan interest deduction	(0.2)	(1.6)	(1.9)
(5) Higher education tuition and fees deduction	(1.8)	(1.7)	(0.4)
(6) Brownfield remediation cost expensing	(1.4)	(2.0)	(0.7)
(7) Tax-free IRA distributions to charity	(1.3)	(0.9)	(0.2)
(8) Exclusion for certain controlled foreign corp. income	(2.2)	(2.6)	(0.6)
(9) Other provisions	(2.7)	(2.9)	(1.7)
Total Impact on State Revenue	**(12.5)**	**(25.7)**	**(21.0)**

The following provisions would have sunsetted at the end of 2010, but were extended to include tax years 2011 and 2012 by the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*.

(1) EITC phase-out income level for joint filers: This is a $5,000 increase in the EITC phase-out income level for joint filers. The phase-out income level was increased by $3,000 beginning in 2008 by the *Economic Growth and Tax Relief Act of 2001* (EGTRRA) and then increased by $5,000 in lieu of the $3,000 increase under the *American Recovery and Reinvestment Act of 2009* (ARRA). The increase in the phase-out income level allows more filers to capture the maximum EITC amount. Indiana taxpayers who qualify for the Federal EITC also receive the Indiana EITC equal to 9% of the Federal EITC.

(2) EITC percentage for filers with 3 or more children: This is a 45% EITC credit percentage for taxpayers with 3 or more children provided under EGTRRA. The 45% credit percentage is in lieu of 40% that would otherwise apply to taxpayers with 2 or more children. The credit percentage is the percentage of earned income that the taxpayers receives back under the credit.

(3) Employer-provided educ. asst. exclusion: This is an exclusion from an individual's AGI for certain employer-provided educational assistance for undergraduate or graduate education. This exclusion was last extended under EGTRRA.

(4) Student loan interest deduction: This involves the above-the-line deduction for student loan interest. This provision increases phase-out income levels for the deduction and allows deduction of interest payments beyond the first 60 months that interest payment are required. These expansions of the deduction were originally provided under EGTRRA.

(5) Higher education tuition and fees deduction: This is an above-the-line deduction for higher education tuition and fees. This deduction was last extended by the *Emergency Economic Stabilization Act of 2008* (EESA).

The following provisions would have sunsetted at the end of 2009 but were extended to include tax years 2010 and 2011 by the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.*

(6) Brownfield remediation cost expensing: This allows certain environmental remediation expenditures to be deducted in the year the expenditures are paid or incurred.

(7) Tax-free IRA distributions to charity: This allows a total exclusion of qualified charitable distributions of IRA funds. In the absence of the exclusion, the normal rules for IRA withdrawals would apply and the contribution would be subject to normal charitable contribution limits.

(8) Exclusion for certain controlled foreign corp. income: This is an exclusion from corporate income for foreign personal holding company income including dividends, interest, rents, royalties and annuities that are paid from one controlled foreign corporation to a related controlled foreign corporation.

Retail Merchant Certificate: The bill provides that the DOR may not renew a registered retail merchant certificate if the retail merchant is delinquent in remitting withholding taxes. This provision could lead to additional income tax collections. The magnitude of the impact is indeterminable but could be significant.

Earned Income Tax Credit (EITC): The bill eliminates the income tax withholding provision that allows a taxpayer to receive an advance refund of the EITC beginning in 2011. This change will not reduce the revenue loss from the EITC, as amounts formerly obtained through the advance refund feature would simply be claimed when the taxpayer files his or her tax return. The Federal advance EITC was eliminated beginning in 2011 under the *FAA Air Transportation Modernization and Safety Improvement Act of 2010* (P. L. 111-226).

The Indiana EITC is equal to 9% of the Federal EITC The advance EITC allows a taxpayer who qualifies for the EITC and has at least one qualifying child to receive part of the credit in each paycheck during the year. The advance EITC essentially reduces Indiana income tax withholdings for the taxpayer and increases their net pay. The table below reports the advance EITC activity from 2003 to 2008 relative to claims of the EITC on tax returns.

	Advance EITC		EITC	
Year	**Filers Receiving**	**Total Received**	**Filers Receiving**	**Total Received**
2003	240	$30,777	386,888	$40.8 M
2004	279	$51,367	411,562	$44.2 M
2005	272	$28,955	427,859	$47.4 M
2006	190	$23,211	440,508	$50.4 M
2007	160	$21,882	467,383	$54.9 M
2008	549	$71,229	480,544	$58.9 M

Financial Institutions Tax: The bill makes changes to the Financial Institutions Tax apportionment formula by establishing a method for attributing gross income receipts that are not attributable to Indiana or any other state (also referred to as "nowhere income"). This change would increase the apportioned Indiana income of taxpayers with nowhere income or unattributed gross receipts. The potential revenue gain from this provision is indeterminable but could be significant.

Explanation of Local Expenditures:

Explanation of Local Revenues: The IRC update could potentially affect taxable income of individual taxpayers. The impact on counties imposing local option income taxes is indeterminable and would vary.

State Agencies Affected: Department of State Revenue; various licensing agencies.

Local Agencies Affected: Counties with local option income taxes.

Information Sources: Tom Conley, Department of State Revenue, (317) 232-2107; Bob Lain, State Budget Agency, (317) 232-3471. OFMA Income Tax databases, 2003-2008. U.S. Congress, Joint Committee on Taxation, *JCT Publications 2010*, http://www.jct.gov/publications.html?func=select&id=48.

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